IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.180 Of 2000.

Date of decision: June 25th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Daya Sagar. ……. Respondent.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl. Advocate General.

For the respondent: Ms. Rashmi Bhardwaj, Advocate vice,
Mrs. Ranjana Parmar, Advocate.

Surinder Singh, J (oral):

The State appellant has felt aggrieved and dissatisfied by the judgment of acquittal passed by the trial court, in Criminal case No.53-II/02, decided on 12.7.1999. The leave to appeal was granted on 28.4.2000 by this court and now the matter has been taken for final hearing.

Shri V.K. Verma, learned Additional Advocate General for the State has ventilated that the impugned judgment of acquittal is unsustainable, on the ground that the learned trial court has not interpreted the evidence of prosecution in the right perspective, which has caused the material prejudice to the case of the prosecution. On the other hand, Miss Rashmi Bhardwaj, learned counsel appearing for the respondent,

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

while supporting the impugned judgment of acquittal has forcefully argued that the prosecution witnesses examined by the trial court has given a different version than that initially set and the ingredients of the offence charged were not met.

I have given my thoughtful consideration to the rival contentions of the parties and have gone through the evidence on record.

Precisely, the case of the prosecution has been that the lift irrigation scheme was sanctioned by the State Government from village Bassa to Village Sukhnara. Later in the year 1978 a water channel was also provided for irrigation, to the lands of the villagers of Katholi upto RD 345. It is alleged that the respondent herein had constructed the shops on the cyphon of the water channel in Khasra No.773 of Mauja Nagrota Surian, District Kangra, thereby blocking the free flow of water to the said beneficiaries. Thus, a complaint was sent by C.R. Premi (PW4), to the vigilance department of the State, on which a FIR No.21/1991 was registered on 3rd April, 1991, under Section 430 of the Indian Penal Code against the respondent.

During the investigation, police visited the spot, prepared site plan Ext.PW7/A and also took into possession the revenue records Exts.PW6/A, PW6/B and PW6/C. After recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure, the case was presented before the trial court. Finding a prima-facie case under Section 430 of the Indian Penal Code, the respondent was accordingly charge-sheeted, to which he pleaded not guilty and claimed trial.

To prove its case, prosecution examined as much as eight witnesses. The complainant C.R.Premi (PW4) turned

hostile to the prosecution. He did not support the case initially set against the respondent. Further, the original complaint, which was alleged to have been filed, did not find the light of the day during the trial of the case. Even the Pradhan Kartar Singh (PW2) was not able to show as to when the original scheme was executed, through this Khasra number and when the respondent had blocked it by raising the construction of the shops. The perusal of the statements of the other witnesses also shows that not only they contradicted the prosecution version in material particulars, but also have blown hot and cold at the same time. The B.D.O. concerned was not examined nor any document showing the sanction and execution of the said scheme through this khasra number has been placed on record.

Further Khasra No.773 aforesaid is jointly owned by the respondent with his other brothers and it has come in the evidence that in family partition it fell to the share of respondent's brother Subhash Chand. The jamabandi for the year 1988-89 depicts the evidence of shops and the complaint was filed in the year 1991. The prosecution witnesses could not point out as and when and by whom the shops in question were raised and there is also contradictory evidence present on the record regarding the functioning of the said water channel as some of the witnesses have stated that the water was yet to be put in the said channel when the shops were being constructed. In view of the above facts, the learned trial court has concluded that the story of the prosecution does not inspire confidence and the case against the respondent stands not proved.

I have reappraised the evidence on record and my conclusion also is verbatim to that of trial court. Therefore, the impugned judgment of acquittal cannot be said to be perverse. The view taken by the learned trial court is reasonable and is born out from the record. Accordingly, while affirming the point-wise findings arrived at by the trial court, I do not find anything worth interference. Consequently, the appeal is hereby dismissed.

The respondent is hereby discharged of his bail bonds, entered upon at any time during the proceedings of this case. The matter stands accordingly disposed of.

June 25th, 2007. **(Surinder Singh)**
(PDS) **Judge**.